

## **TENTATIVE RULINGS for CIVIL LAW and MOTION**

### **April 1, 2010**

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov). If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6941

#### **TENTATIVE RULING**

Case: **Jacobs v. Pacific Transportation Services**

**Case No. CV PM 06-1710**

**Hearing Date: April 1, 2010 Department Fifteen 9:00 a.m.**

Defendants' motion to exclude the trial testimony of Dr. Claude S. Munday is **GRANTED**.  
(Code Civ. Proc., § 2034.300.)

The purpose of the expert witness discovery statute is to give fair notice of what expert opinion a party will offer at trial so that the parties may assess whether to take the expert's deposition, explore the relevant subject area at any such deposition, and be prepared to rebut an expert's opinion. (*Bonds v. Roy* (1999) 20 Cal.4th 140, 146-147.) Plaintiff disclosed Dr. Munday as an expert but later withdrew this designation. Upon such withdrawal, the defendants were no longer on notice that they would be required to meet Dr. Munday's expert opinion at trial. Plaintiff did not move to "reinstate" Dr. Munday as a trial expert witness.

Even if the plaintiff can rely on the expert witness disclosure dated October 27, 2008, this disclosure states that Dr. Munday would testify about "the head injury sustained by plaintiff Michial Jacobs in the subject accident." It has not been shown that this statement reasonably encompasses the condition of multiple sclerosis. There is no evidence or argument that the multiple sclerosis was a "head injury" caused by the October 2, 2004, collision.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

#### **TENTATIVE RULING**

Case: **People v. \$811.10 (David Robert Gribble)**

**Case No. CV PT 10-559**

**Hearing Date: April 1, 2010 Department Fifteen 9:00 a.m.**

The People are directed to appear to advise the Court of any related, pending criminal action and whether the People intend to file a petition in response to Mr. Gribble's claim opposing forfeiture.

## TENTATIVE RULING

**Case:** Page v. Regents of the University of California, et al.  
Case No. CV PM 08-228

**Hearing Date:** April 1, 2010 **Department Fifteen** **9:00 a.m.**

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### **Textron, Inc.'s Motion to Compel IME:**

Defendant Textron Inc., dba, E-Z-Go's motion to compel Robert Page to attend the independent medical examination ("IME") is **GRANTED**. (Code Civ. Proc., §§ 2032.310 et seq.) Defendant's IME of Robert Page shall proceed on March 29, and 30, 2010, as noticed. Dr. Ruff's report shall be provided to Plaintiffs' attorney by **April 23, 2010**. Plaintiffs' counsel may observe the oral history portion of the exam only. Plaintiff has the right to record the mental examination by audio technology. (Code Civ. Proc., § 2032.530.) At the March 25, 2010 hearing, the parties agreed that Dr. Ruff would record the hearing and retain the recording. If any issues arise concerning the IME, Dr. Ruff will release the recording for an in camera review upon noticed motion.

### **Foundry Networks, Inc. Motion for Summary Judgment/Adjudication:**

Foundry Networks, Inc.'s ("Foundry") motion for summary judgment or, in the alternative, summary adjudication is **DENIED**. (Code Civ. Proc., § 437c; Foundry's Undisputed Material Facts 1-37 and Regents responses to facts nos. 4, 9, 19-22 24-25; Regents Undisputed Material Facts 1-29.) The evidence submitted in support of and against the motion shows that there are triable issues of material fact as to whether the Commodity Agreement (UCD 0201345) or other written WiFi agreement was controlling and in effect at the time of the accident, and whether Mr. Page and/or Mr. Schick were agents or subcontractors of Foundry at the time of the accident.

Foundry Networks, Inc.'s objections to evidence numbers 1-5 are **OVERRULED**. All other objections are **SUSTAINED**. (Evid. Code, § 702; Declaration of Baldwin, Exhibit K.)

### **Regents Motion for Summary Judgment/Adjudication:**

Regents of the University of California's motion for summary adjudication of the issue of duty to defend and of the fifth cause of action for breach of contract are **DENIED**. (Code Civ. Proc., § 437c; Regents' Undisputed Material Facts 1-38 and Foundry's responses; Foundry's Additional Undisputed Material Facts 14, 17, 19-22, 30, 32, 35-72.) The evidence submitted in support of and against the motion shows that there are triable issues of material fact as to whether the Commodity Agreement (UCD 0201345) or other written WiFi agreement was controlling and in effect at the time of the accident, and whether Mr. Page and/or Mr. Schick were agents or subcontractors of Foundry at the time of the accident.

Foundry Networks, Inc.'s objections to evidence numbers 1-4 are **OVERRULED**. (Evid. Code, § 210, 702, 801, 1200, 1400; Declaration of Gertridge, Exhibits 11-16.)

If no hearing is requested, this tentative ruling is effective immediately. Defendants and Plaintiffs are directed to prepare formal orders consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.